



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG-2011-0187]

RIN 1625-AB76

MARPOL Annex V Special Areas: Wider Caribbean Region

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: By this final rule, the Coast Guard amends the list of special areas in effect under Annex V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended, to include the Wider Caribbean Region special area. The current list of special areas in effect is outdated because it does not include this special area, which went into effect May 1, 2011. This rule will correct the list of special areas in effect to provide accurate information to the public.

DATES: This final rule is effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-0187

and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2011-0187 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David Condino, U.S. Coast Guard Office of Port and Facility Activities; telephone 202-372-1145, e-mail David.A.Condino@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

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I. Abbreviations

ABA	American Boating Association
AMI	Association of Marina Industries
APHIS	Animal and Plant Health Inspection Service
APPS	Act to Prevent Pollution from Ships, Pub. L. 96-478, as amended (33 U.S.C. 1901 <u>et seq.</u>)
CFR	Code of Federal Regulations
CFV	Commercial Fishing Vessel
CLIA	Cruise Lines International Association
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
IMO	International Maritime Organization
ISM	International Safety Management Code
MARPOL	The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended
MEPC	Marine Environmental Protection Committee
MISLE	Marine Information for Safety and Law Enforcement
NPRM	Notice of proposed rulemaking
OSV	Offshore supply vessel
RCP	Responsible Carrier Program
RFA	Regulatory Flexibility Act
SOLAS	International Convention for Safety of Life at Sea
U.S.C.	United States Code
USPS	U.S. Power Squadron
WCR	Wider Caribbean Region

II. Regulatory History

On August 6, 2009, we published a notice and request for comments entitled "Comment Request on MARPOL Annex V Wider Caribbean Region Special Area" in the Federal Register (74 FR 39334). This notice anticipated the eventual entry into effect of the Wider Caribbean Region (WCR) special area, but recognized that no date had been set by the

International Maritime Organization (IMO). We received three comments in response to the notice. Those comments are addressed in the "Discussion of Comments and Changes" section below.

On March 22-26, 2010, the Marine Environmental Protection Committee (MEPC) of the IMO met at IMO headquarters in London, England. On April 12, 2010, the MEPC published their "REPORT OF THE MARINE ENVIRONMENT PROTECTION COMMITTEE ON ITS SIXTIETH SESSION" (available free at <http://docs.imo.org/>, registration required). In that report, the MEPC set May 1, 2011 as the date for the WCR special area to come into effect.

On April 7, 2011, we published a notice entitled "Notice of Entry into Effect of MARPOL Annex V Wider Caribbean Region Special Area" in the Federal Register (76 FR 19380). That notice informed the public of the entry into effect of the WCR special area on May 1, 2011.

This Final Rule amends the regulations in 33 CFR part 151 to reflect the entry into effect of the WCR special area. The Coast Guard did not publish a Notice of Proposed Rulemaking (NPRM) for this amendment. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, because this final rule does not call for any substantive legal changes. In short, the rule merely corrects in the Coast Guard's regulations the list of

special areas currently in effect. Under IMO rules, as incorporated by the Act to Prevent Pollution from Ships (APPS) and 33 CFR 151.53(b), the WCR is already in effect under U.S. law. Further, under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

Good cause exists when publication would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Publishing an NPRM and delaying the effective date are unnecessary because the change being made is a conforming amendment required by existing authority—33 CFR 151.53(b)—and because, as explained *infra*, an opportunity for public comment has already been provided.

Also, this rulemaking merely restates a legal responsibility already in effect under MARPOL and APPS (33 U.S.C. 1901 et seq.), which is the U.S. authority implementing MARPOL. Through APPS, the United States accepts the IMO process for bringing Annex V special areas into effect. 33 U.S.C. 1901(a)(5), see also section 1907(a) (requiring compliance with MARPOL). Since the United States first accepted Annex V, another special area, the WCR, has come into effect through the IMO process. This rulemaking corrects the list at 33 CFR 151.53 to accurately list the

special areas currently in effect.

The opportunity for public comment on the regulations related to APPS, including the IMO process for bringing special areas into effect, was provided in 1989. The original APPS regulations in 33 CFR parts 151, 155, and 158 were implemented through a full informal rulemaking process, including an Advance Notice of Proposed Rulemaking (53 FR 23884, June 24, 1988), an Interim Rule with Request for Comments (54 FR 18384, April 28, 1989), and a Final Rule (55 FR 35986, September 4, 1990) (APPS rulemaking). The Coast Guard held three public meetings, received public comments, and responded to all comments received. The Coast Guard received no comments on the IMO process for bringing special areas into effect. There have been no substantive changes regarding this process since the APPS rulemaking and this rulemaking also does not change that process.

In the 2009 notice and request for comments, the Coast Guard specifically requested information on issues that impact port reception facilities, commercial vessels, and recreational vessels operating in the WCR special area and requested recommendations to address any issues. We summarize and respond to those comments in section V of this document. We did not receive any additional data or information on the impacts of the WCR special area.

III. Basis and Purpose

MARPOL consists of 20 articles and Annexes I-VI. Annex V regulates the discharge of garbage from ships. The United States became a party to MARPOL through APPS, and became a party to Annex V through section 2101 of the Marine Plastic Pollution Research and Control Act (Pub. L. 100-220).

MARPOL establishes nine "special areas," eight of which apply to Annex V. In a MARPOL Annex V special area, the rules on the discharge of garbage are more restrictive than outside of a MARPOL Annex V special area.

This final rule modifies 33 CFR 151.53(c) and Appendix A of Part 151 to add the WCR special area to the list of special areas currently in effect. This change harmonizes Coast Guard regulations with MARPOL and clarifies where the discharge restrictions found at 33 CFR 151.71 (Operating Requirements: Discharge of garbage within special areas) apply.

IV. Background

A MARPOL Annex V special area is a sea area where the adoption of special mandatory methods for the prevention of sea pollution by garbage is required. The Coast Guard is updating the list of special areas in effect at 33 CFR 151.53(c) to include the WCR special area.

A special area under MARPOL Annex V enters into force when sufficient parties to MARPOL agree that the adoption of

special mandatory methods for the prevention of sea pollution by garbage is required in that area. "Enters into force," means that the special area is defined and recognized for treaty purposes. However, the special area regulations do not apply in that special area until the special area enters into effect.

A special area enters into effect on the date set by the IMO after the IMO receives sufficient notification from Member states bordering a special area of adequate port reception facilities. This date is the special area's "effective date." In a special area prior to its effective date, 33 CFR 151.69 (Operating requirements: Discharge of garbage outside special areas) applies. In a special area after its effective date, the more restrictive requirements of 33 CFR 151.71 (Operating Requirements: Discharge of garbage within special areas) apply.

The special area that this rule addresses is the WCR special area, as defined in Regulation 5(1)(h) of MARPOL Annex V and 33 CFR 151.06. This special area entered into force (but not effect) on April 4, 1993, as agreed to by Parties to MARPOL Annex V.

The MEPC decided to set the effective date after hearing a report, co-sponsored by 22 WCR Member States, during its March 2010 meeting that all but three states (Belize, Jamaica, and Nicaragua) in the WCR reported that

they had adequate garbage reception facilities in their ports¹. At that time the three WCR countries that were not listed as co-sponsors of MEPC 60/8/2 reported that they either were establishing those facilities or had made arrangements with neighboring countries.

The special discharge restrictions for the WCR special area entered into effect on May 1, 2011 (IMO Circ. Letter No. 3053, April 14, 2010²). As of May 1, 2011, the discharge of garbage from vessels in the WCR area is restricted to the discharge of food wastes only (i.e., subject to the restrictions of MARPOL Annex V, Regulation 5 and 33 CFR 151.71).

The list of special areas currently in effect at 33 CFR 151.53(c) does not include the WCR. This list, and Appendix A to part 151, must be corrected to provide the maritime community an accurate list of special areas currently in effect.

V. Discussion of Comments and Changes

As noted above, on August 6, 2009, we published a notice and request for comments entitled "Comment Request on MARPOL Annex V Wider Caribbean Region Special Area" in the Federal Register (74 FR 39334). This notice anticipated the

¹ MEPC 60/8/2, IDENTIFICATION AND PROTECTION OF SPECIAL AREAS AND PARTICULARLY. SENSITIVE SEA AREAS "Wider Caribbean Region" as a Special Area under MARPOL Annex V. A copy is in the docket.

² A copy of the Circular is in the docket.

eventual entry into effect of the WCR special area, even though at the time of publication no effective date had been set by the IMO. We received three letters and three different comments on the WCR special area. None of the comments indicated that the heightened discharge restrictions coming into effect for the WCR would result in increased burdens to vessels or reception facilities.

One commenter brought up the problem of dry bulk cargo wash-water. Dry bulk cargo ships are not generally designed to store wash-water and port facilities are generally not able to receive and treat wash-water. Pending a final decision by IMO, the Coast Guard supports the current IMO exception to Annex V for dry cargo wash-water discharges in special areas. Under IMO MEPC.1/Circ.675/Rev.1 26 March 2010, dry cargo residue wash-water is not considered garbage under Annex V in the WCR special area and, therefore, is not a subject of this rulemaking.

One comment expressed the commenter's belief that the Resource Conservation and Recovery Act disincentivizes commercial vessels from disposing of garbage at a shore facility. We agree that additional efforts are necessary to protect the environment from the discharge of hazardous materials at sea. However, those efforts are outside the scope of this rulemaking.

Another comment addressed the different requirements for reception facilities for garbage under MARPOL and U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) regulations in titles 7 and 9 of the CFR. Garbage subject to APHIS regulations is a subset of garbage regulated under MARPOL. APHIS regulations relate to foreign plant and/or animal waste, including galley waste and any materials that have come in contact with such waste. Requirements for APHIS regulated plant and animal wastes remain unchanged and are not a subject of this rulemaking.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. This final rule has not been designated a "significant regulatory action" under section 3(f) of Executive Order 12866.

Accordingly, the final rule has not been reviewed by the Office of Management and Budget.

A regulatory assessment follows:

Regulatory changes

Prior to Annex V becoming effective in the WCR on May 1, 2011, the rules governing discharge of garbage applicable to the WCR were found at 33 CFR 151.69. That is, the standards found at 33 CFR 151.69 define the regulatory baseline for the 2010 MEPC actions establishing an effective date for the WCR as a special area. The final rule will correct 33 CFR 151 to reflect that the discharge restrictions for special areas found at 33 CFR 151.71 apply to the WCR.

MARPOL Annex V segregates garbage into the following types:

- Plastics, including synthetic ropes, fishing nets, and plastic bags;
- Dunnage (i.e. bracing materials), lining, and packing materials that float;
- Paper, rags, glass, metal, bottles, crockery and similar refuse;
- Paper, rags, glass, etc., comminuted or ground;

- Victual waste not comminuted or ground; and
- Victual waste comminuted or ground.

Sections 151.69 and 151.71 of 33 CFR set the rules for each garbage type by these zones, defined according to distances from the nearest land: less than 3 miles, less than 12 miles, less than 25 miles, and greater than 25 miles.

Below are comparisons of the restrictions in § 151.69 and § 151.71 by garbage type:

- Plastics: Both sections prohibit the discharge of plastics anywhere.
- Dunnage, lining, and packing materials that float: § 151.69 permits the discharge of dunnage only in the greater than 25 miles zone. However, § 151.71 prohibits the discharge of dunnage anywhere in a special area.
- Paper, rags, glass, etc. and similar refuse: § 151.69 permits the discharge of paper etc. only in the 12-25 miles and greater than 25 miles zones. However, § 151.71 prohibits the discharge of paper etc. anywhere in a special area.
- Ground paper, rags, glass, etc.: § 151.69 permits the discharge of ground paper etc. outside the less than 3 miles zone. However, § 151.71

prohibits the discharge of ground paper etc. in all zones in a special area.

- Victual Waste: Both sections permit the discharge of victual waste in the 12-25 miles and greater than 25 miles zones.
- Ground Victual Waste: Both sections permit the discharge of ground victual wastes in all zones other than the less than 3 miles zone.

Table VI.1 shows the provisions of §§ 151.69 and 151.71. The more restrictive provisions of § 151.71 prohibit the discharge of any materials other than Victual Waste or Ground Victual Waste anywhere in the WCR.

Table VI.1: Comparison of Discharge Restrictions in §§ 151.69 and 151.71.

Material	Section	Miles from Nearest Land			
		< 3	3-12	12-25	> 25
Plastics	§151.69	No	No	No	No
	§151.71	No	No	No	No
Dunnage	§151.69	No	No	No	Yes
	§151.71	No	No	No	No
Paper, etc.	§151.69	No	No	Yes	Yes
	§151.71	No	No	No	No
Ground Paper, etc.	§151.69	No	Yes	Yes	Yes
	§151.71	No	No	No	No
Victual Waste	§151.69	No	No	Yes	Yes
	§151.71	No	No	Yes	Yes
Ground	§151.69	No	Yes	Yes	Yes

Victual					
Waste	\$151.71	No	Yes	Yes	Yes

As the table shows, the differences between §§ 151.69 and 151.71, which identify the changes applicable to any special area after its effective date as established by the IMO, are these additional prohibitions:

- Dunnage in the greater than 25 miles zone;
- Paper, etc. in the 12-25 mile zone and greater than 25 miles zone; and
- Ground paper etc. in the 3-12 mile, 12-25 mile, and greater than 25 miles zones.

In the Background section we described how, at the March 2010 meeting, the IMO's MEPC set the effective date for the WCR special area as May 1, 2011. At that meeting, the United States (and 21 other WCR countries) reported to the IMO that they had adequate port reception facilities at ports and terminals bordering the WCR. However, the United States had adequate port reception facilities established years before the 2010 meeting; the Coast Guard began issuing MARPOL Annex V Certificates of Adequacy (certification that a facility may receive garbage in compliance with MARPOL and APPS) in 2001. Other WCR countries party to MARPOL have been ready since March 2010 or earlier.

Current Industry Practice

The Coast Guard estimates that the IMO's action does not impose an additional burden on the U.S. maritime community. We evaluated the vessels transiting the WCR by different sectors (cruise line, commercial fishing vessel, other commercial vessel, and recreational vessel) and then researched waste management rules and practices in each sector to establish a baseline of current practices. Table VI.2 summarizes the results of our findings for each sector.

Table VI.2: Summary of Current Industry Practice by Sector

Sector	Garbage Type		
	Dunnage	Paper	Ground Paper
Cruise Lines	Current practice	Current practice	Current practice
Commercial Fishing Vessels	Not relevant to this sector	Current practice	Not relevant to this sector
Other Commercial Vessels	Current practice and inspections	Current practice and inspections	Current practice and inspections
Recreation vessels	Not relevant to this sector	Current practice and education programs	Not relevant to this sector

Below we present our findings for each sector.

1. Cruise Line Sector

The cruise line sector is international in scope and its vessels are subject to the provisions of MARPOL. In June 2001, the International Council of Cruise Lines and its members adopted a set of practices and procedures entitled "Cruise Industry Waste Management Practices and

Procedures.”³ Currently, the vessels of the cruise industry are subject to many regulatory regimes, including U.S. laws and regulations; state regulations that may be more strict than U.S. laws, including Florida⁴; the International Convention for Safety of Life at Sea (SOLAS); the International Safety Management Code (ISM); and MARPOL.

The Cruise Lines International Association (CLIA) in 2010 published a document “CLIA at 35: Steering a Sustainable Course”⁵ that describes its environmental policies. Part II, “Waste Management”, states that CLIA’s Waste Management Procedures and Policies are incorporated in their members’ safety management systems. The document also describes on-board recycling, trash, and garbage management procedures. These include numerous points on the vessel for the collection of recyclable materials from passengers and crew, on-board compacting and storage of aluminum, on-board shredding of paper and cardboard, and the grinding and discharge of food wastes in compliance with MARPOL.

In general, cruise ships are fitted with on-board recycling systems for many materials, other materials are incinerated or brought ashore, and the only solid waste discharged at sea is food waste of either the Victual Waste

³ Ibid, p. 6.

⁴ Web site of the Cruise Lines International Association, <http://www2.cruising.org/industry/environment.cfm>.

or Ground Victual Waste type. We concluded that the cruise line sector is currently compliant with the current MARPOL regulations, the APPS, and other U.S. laws. As this final rule will only add the references to the MARPOL restrictions to the CFR, the Coast Guard estimates that there will be no additional costs to this sector.

2. Commercial Fishing Vessel Sector

We compared Annex V restrictions to the characteristics of commercial fishing vessels (CFVs). As noted in Table VI.1, Annex V increased the discharge restrictions for the Dunnage, Paper, and Ground Paper types in special areas.

With respect to the Dunnage type, CFVs, as single-purpose vessels, carry supplies and equipment related to their fishing operations. They do not carry general cargo or bracing, lining, or other materials included in the Dunnage type that are used in freight ships. Thus, the special area restrictions of Annex V, prohibiting the discharge of Dunnage anywhere in the WCR, will not impact CFVs operating out of U.S. ports in the WCR.

CFVs operating out of U.S. ports in the WCR typically engage in short voyages with small crews. This means that they will not generate large waste streams, obviating the need for a specialized paper grinder or shredder like those

⁵ Cruise Lines International Association,
http://www.cruising.org/vacation/news/press_releases/2010/09/celebrating-its-35th-year-clia-releases-new-environmental-report.

found on cruise ships. Also, a grinder or shredder would take up space that would otherwise be used for the vessel's fishing operations. Because U.S. CFVs operating in the WCR do not generate ground paper, we believe that the Annex V restrictions on Ground Paper will not result in additional compliance costs for them.

The Annex V restrictions on the Paper type will apply to CFVs. Under the less stringent standards found at § 151.69, discharge of Paper is permitted if greater than 12 miles from the nearest land. As mentioned above, CFV operations consist of short voyages, returning to the same port they left from to deliver their catch. Our previously cited research also indicates that any Paper waste is produced in the galley primarily, commingled and packaged with victual and other waste, and disposed of when returned to home port. Although Annex V prohibits the discharge of Paper waste throughout the WCR, our assessment is that Paper waste on CFVs is currently being commingled with other garbage. The Coast Guards estimates that this final rule will not affect current behavior or result in additional costs to this sector.

3. Other Commercial Vessels

This sector is comprised of commercial vessels other than the cruise ships and commercial fishing vessels ("other commercial vessels"). The other commercial vessels sector

includes both foreign-flag and U.S.-flag vessels that transit or operate in the WCR. With regard to foreign-flag vessels, they are engaged in international transits and may transit the other special areas that have been in effect longer than the WCR. For that reason, we conclude that they are already complying with Annex V restrictions and that the WCR coming into effect will not impose any additional costs to them.

To identify the other U.S.-flag commercial vessels that will be affected by the final rule, we extracted from the Marine Information for Safety and Law Enforcement (MISLE) database information about the U.S.-flag vessels as of September 2011. We used the SOLAS certificate documentation to identify the subset of such vessels that have international capability. The resulting population of U.S.-flag other commercial vessels is dominated by offshore supply vessels (OSVs), towing vessels, and freight ships. The population also includes specialty oil service and passenger vessels. OSVs includes vessels supporting near-coastal and harbor work. The towing vessel sector is diverse and includes some vessels that work exclusively in inland waters, some vessels that work in the intracoastal waterways and some vessels that remain within 3 miles of land.

We analyzed the characteristics of this population of other commercial vessels with respect to existing regulatory requirements and we found that all of these vessels are subject to one or more compliance regimes. All of these vessels are in at least one of the following categories: 1) Coast Guard inspected vessels, or 2) uninspected vessels which have voluntarily adopted an audit-based safety management system (SMS) such as the IMO's International Safety Management Code (ISM) or the American Waterways Operator's Responsible Carrier Program (RCP). Below, we discuss the garbage management requirements under these compliance regimes and summarize our findings.

Coast Guard Inspected Vessels

Coast Guard inspected vessels are already required to comply with the requirements of MARPOL. Under 33 CFR 151.61, the Coast Guard may inspect any "ship subject to inspection" for compliance with the APPS regulations. APPS regulations include the waste management plan requirements of 33 CFR 151.57. Section 151.57 requires compliance with MARPOL and waste management plans for vessels in a defined group; that group includes all of the inspected vessels in the other commercial vessels population. Compliance with these requirements is part of the Coast Guard safety and security inspection regime.

Vessels with Audit-Based Safety Management Systems

All of the vessels which are not subject to Coast Guard inspection, but are part of the other commercial vessels population, have voluntarily adopted one of the two major audit-based safety management system (SMS): either the IMO's International Safety Management Code (ISM), or the American Waterways Operator's Responsible Carrier Program (RCP). Both the ISM and the RCP require that ships adhere to applicable laws and regulations, including MARPOL Annex V. Each regime also includes requirements relating to sanitation. For example, the RCP's section II.D, "Environmental Policy and Procedures,"⁶ requires each vessel to have procedures and documentation for garbage disposal, handling of waste oil, sanitary systems and handling of sewage. Similarly, the ISM Code states that one of its objectives is "avoidance of damage to the environment, in particular to the marine environment and to property,"⁷ and that a ship's safety management system should "assess all identified risks to its ships, personnel and the environment and establish appropriate safeguards."

Each company subject to the ISM or RCP documents the specific processes and policies its vessels will follow to comply with all of the applicable SMS's requirements. Both the ISM and the RCP use third-party auditors to ensure that

⁶ American Waterways Operators, http://www.americanwaterways.com/commitment_safety/RCP.pdf.

⁷ International Maritime Organization, <http://www.imo.org/ourwork/humanelement/safetymanagement/pages/ismcode.aspx>.

the vessels and company policies are in compliance with the applicable safety regimes. Thus, these compliance regimes ensure that ships adhere to current federal rules, including MARPOL Annex V and APPS, as well as additional regime-specific sanitation and garbage management procedures.

Summary of Findings

We conclude that these commercial vessels currently meet the garbage management requirements of the final rule. The Coast Guard therefore estimates that there will be no additional costs to these vessels.

4. Recreational Vessels

As described earlier in this section, the passing of the effective date of the WCR special area increased the restrictions on the discharge of the Dunnage, Ground Paper, and Paper types. The Dunnage type would not apply to recreational vessels, because they do not carry containers or other general cargo that would require the bracing and lining materials that comprise this garbage type.

With respect to Ground Paper, Coast Guard experience indicates that recreational vessels do not have space for a specialized shredder or grinder to process the materials in the Ground Paper type. Instead, this material is commingled with other garbage types. Our assessment then is that the

Ground Paper type is not relevant to the recreational vessel sector.

The remaining garbage type that has a new restriction in the WCR is Paper. Once the WCR special area came into effect, ships were prohibited from discharging Paper anywhere in the WCR. Before the WCR special area came in to effect, such discharge was allowed 12 miles or more from the nearest land.

To address pollution on the waterways, which may be from either shoreside or vessel sources, the recreational boating community is actively engaged in education, which we refer to as "clean water/marina programs," collectively. These programs are focused on comprehensive waste management actions and already incorporate the restrictions of Annex V. The list below summarizes some of the programs pursued by leading recreational boating organizations:

- BoatU.S. Foundation: The BoatU.S. Foundation promotes safety and clean water. Its clean water program, called "Stash the Trash", advises boaters to know and follow the applicable laws and regulations, throw no trash of any kind overboard, return everything to land that they take out to sea, and pick up trash on the waters and in marinas.⁸

⁸ BoatU.S. Foundation, <http://www.boatus.com/foundation/cleanwater/stashtrash.asp>.

- U.S. Power Squadron (USPS): The USPS has a national Environmental Committee, whose goals include educating boaters about applicable laws, regulations, and good environmental management practices; and promoting activities to clean up waterways.⁹
- Association of Marina Industries (AMI): The AMI's Clean Marina program "is a voluntary compliance program that stresses environmental and managerial best management practices that exceed regulatory requirements . . . A typical Clean Marina program will have components that cover marina [siting] and design considerations, marina management, emergency planning, petroleum control, sewage and gray water, waste containment and disposal, storm water management, habitat and species protection and boater education."¹⁰ Florida¹¹, Louisiana¹², and Texas¹³ have Clean Marina programs that are sponsored by state agencies.
- American Boating Association (ABA): The Clean Trash Discharge part of the ABA's Clean Boating program includes information about the Marine

⁹ U.S. Power Squadron, <http://www.usps.org/national/envcom/>.

¹⁰ Association of Marina Industries, <http://marinaassociation.org/government/clean-marina>.

¹¹ State of Florida, <http://www.dep.state.fl.us/cleanmarina/>.

¹² State of Louisiana, <http://dnr.louisiana.gov> (enter clean marinas in the search tool)

¹³ State of Texas, <http://www.cleanmarinas.org/>.

Plastic Pollution Research and Control Act and MARPOL Annex V, and advocates proper stowage of all articles and return of everything taken aboard.¹⁴

For the recreational boater, the application of increased restrictions in the WCR, by itself, is narrow, because it only affects the Paper type in the two farthest zones. Moreover, because clean water/marina programs are already advocating the practices consistent with the increased restrictions described in 33 CFR 151.71, we conclude that the publication of this final rule will not require recreational boaters to learn or adopt any new behavior. The Coast Guard estimates that there will be no additional costs to the owners of recreational vessels.

Summary

In both the commercial and recreational sectors, we estimate current garbage and waste management practices are already consistent with the changes enacted by IMO. These include recycling on the larger vessels and stowage and onshore disposal for vessels of all sizes and types. In summary, the Coast Guard estimates that there will be no additional costs to the public by this final rule.

Benefits

¹⁴ American Boating Association, <http://www.americanboating.org/clean.asp>.

Without the promulgation of this final rule, discrepancies between the CFR and the requirements found in the APPS and MARPOL would continue and provide inconsistent information to operators of industrial and recreational vessels that transit the WCR.

The primary benefit of this rule is to provide consistent information on MARPOL Annex V special area requirements in order to increase the regulated community's awareness of the requirements. The secondary benefit is more efficient regulations through greater consistency between U.S. domestic regulations and MARPOL Annex V.

B. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. However, when an agency is not required to publish an NPRM for a rule, the RFA does not require the agency to prepare a regulatory flexibility analysis. The Coast Guard was not required to publish an NPRM for this rule for the reasons stated in Section II, "Regulatory History." Therefore, the Coast Guard is not required to publish a regulatory flexibility analysis.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we

want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This rule does not call for any new collections of information, as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order.

States do not have the authority to regulate special areas under MARPOL Annex V, including the Wider Caribbean Region special area. Therefore, we have determined that the final rule does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(a) of the

Instruction and under section 6(b) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48244, July 23, 2002). This rule involves regulations which are editorial or procedural, in that the regulatory change merely restates an already-existing obligation in a more convenient place. Accordingly, paragraph 34(a) of the Instruction applies. This rule also involves regulations mandated by Congress in APPS; congressionally mandated regulations designed to improve or protect the environment are excluded under section 6(b) of the Appendix. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151 continues to read:

Authority: 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104-227 (110 Stat. 3034); Pub. L. 108-293 (118 Stat. 1063), Sec. 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; DHS Delegation No. 0170.1, sec. 2(77).

Subpart A—Implementation of MARPOL 73/78 and the Protocol on Environmental Protection to the Antarctic Treaty as it Pertains to Pollution from Ships

§ 151.53 [Amended]

2. Amend § 151.53(c) by adding the words "Wider Caribbean Region, the" before the word "Mediterranean"; adding the word "the" before the word "Baltic"; and adding a comma after the word "Gulfs."

3. Revise Appendix A to §§ 151.51 through 151.77 to read as follows:

Appendix A to §§ 151.51 through 151.77—Summary of Garbage Discharge Restrictions

Garbage Type	All Vessels Except Fixed or Floating Platforms and Associated Vessels		Fixed or Floating Platforms & Assoc. Vessels ³ (33 CFR 151.73)
	Outside special areas (33 CFR 151.69)	In special areas ² (33 CFR 151.71)	
Plastics—includes synthetic ropes and fishing nets and plastic bags.	Disposal prohibited (33 CFR 151.67).	Disposal prohibited (33 CFR 151.67).	Disposal prohibited (33 CFR 151.67).
Dunnage, lining and packing materials that float.	Disposal prohibited less than 25 miles from nearest land and in the navigable	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.

	waters of the U.S.		
Paper, rags, glass, metal bottles, crockery and similar refuse.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.
Paper, rags, glass, etc. comminuted or ground. ¹	Disposal prohibited less than 3 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.
Victual waste not comminuted or ground.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited less than 12 miles from nearest land.	Disposal prohibited.
Victual waste comminuted or ground. ¹	Disposal prohibited less than 3 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited less than 12 miles from nearest land, except in the Wider Caribbean Region special area, where disposal is prohibited less than 3 miles from nearest land.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.
Mixed garbage types. ⁴	See Note 4.	See Note 4.	See Note 4.

Note 1: Comminuted or ground garbage must be able to pass through a screen with a mesh size no larger than 25 mm. (1 inch) (33 CFR 151.75)

Note 2: Special areas under Annex V are the Mediterranean, Baltic, Black, Red, and North Seas areas, the Gulfs area, and the Wider Caribbean Region. (33 CFR 151.53)

Note 3: Fixed or floating platforms and associated vessels includes all fixed or floating platforms engaged in exploration, exploitation or associated offshore processing of seabed mineral resources, and all ships within 500m of such platforms.

Note 4: When garbage is mixed with other harmful substances having different disposal or discharge requirements, the more stringent disposal restrictions shall apply.

Dated: March 16, 2012

J.G LANTZ
Director of Commercial Regulations and Standards
U.S. Coast Guard

[FR Doc. 2012-7787 Filed 03/30/2012 at 8:45 am; Publication Date: 04/02/2012]